

# BOARD OF REGISTERED NURSING

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*Protection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Business and Professions Code § 2708.1

The Board of Registered Nursing (BRN) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 *et seq.*, BRN licenses registered nurses (RNs), and certifies advanced practice nurses, including certified nurse-midwives (CNMs), nurse practitioners (NPs), registered nurse anesthetists (CRNAs), clinical nurse specialists (CNSs), and public health nurses (PHNs). In addition to licensing and certification, BRN establishes accreditation requirements for California nursing schools and reviews nursing school criteria; receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR). As of 2019, BRN licenses over 450,000 RNs and certifies approximately 100,000 advanced practice nurses.

By law, the nine-member Board consists of four public members and five licensees. The licensee members must include two direct-patient care nurses, an advanced practice nurse, a nurse administrator, and a nurse educator. Seven of the members (including all of

the RN members) are appointed by the Governor and two of the public members are appointed by the legislature. The Nursing Practice Act also requires BRN's Executive Officer to be a BRN licensee, a unique requirement among DCA boards. At this writing, there is one public member vacancy and two licensee member vacancies on the Board.

## **MAJOR PROJECTS**

### **Rulemaking Relating to BRN's Approval Requirements**

At its June 13, 2019 [meeting](#), BRN voted to move forward with the formal rulemaking process to amend sections 1423 and 1432, Title 16 of the CCR pertaining to BRN's approval requirements for nursing programs. The Board [originally approved](#) staff's proposed amendments to these sections on May 9, 2019. Noting that the last major revision of these regulations took place in 2010, BRN has continually refined its processes over the last nine years to address emerging issues and seeks to update its regulations accordingly.

Trande Phillips, RN and Chair of the Administrative Committee, requested that the Board withdraw the language approved on May 9, 2019, and instead approve the [language provided](#) at the June 13, 2019 meeting. The Board approved the minor and technical changes requested, in order to conform to existing defined terms in the regulations. These changes make it clear that the Board would be allowed to deny or revoke a program applicant's approval if the nursing program or applicant knowingly concealed or misrepresented a material fact to the Board. In addition, under the proposed regulations, a program would be required to notify the Board of substantive changes, such as any increase in annual enrollment, or change in frequency, timing, or new student admissions for Board-

approved programs or degree options. The Board intended for these changes to provide more clarity to nursing programs and applicants regarding their disclosure obligations. At this writing, the Board has not yet formally noticed the proposed amendments.

## **Legislature Orders Audit of BRN's Oversight of Pre-Licensure Nursing School Programs**

On August 28, 2019, the Board appeared before the [Joint Legislative Audit Committee](#) to discuss the “Oversight of Pre-Licensure Nursing School Programs (Assembly Member Rubio).” The Committee voted 9 to 2 in favor of the audit, despite BRN and other opposition. In BRN’s August 23, 2019 [letter](#) to the Committee, President Jackson and Executive Officer Morris argue that California is positioned to replace retiring registered nurses, as California licenses three times as many new registered nurses than nurses who are potentially retiring. The letter further explains that there are nursing staff shortages in some areas and surpluses in others, and part of BRN’s public protection mandate is to ensure that nursing schools are producing more candidates and clinical placements in the areas where there are shortages, and not allowing increasing enrollments where clinical displacements in worksites are already occurring. BRN argues that this audit could be duplicative of the Board’s 2020 Sunset Review process, and that there are already several external checks on the Board’s authority and actions. Further, some of the audit objectives may be reviewed by the Office of Administrative Law (OAL) or through the challenge of a Board decision in Superior Court, as certain nursing schools who want to expand enrollment are allegedly unhappy with recent Board actions impacting their programs. Many other nursing-related organizations wrote similar letters in opposition to the audit of BRN’s oversight of pre-licensure nursing school programs.

At the September BRN [meeting](#), Executive Officer Joseph Morris reported that the Board continues to review its internal business processes, and the State Auditor would be contacting the Board to begin the audit planning process.

## **Board Reports Changes to NCLEX-RN Test Plan**

In its Summer 2019 edition of [The BRN report](#), the Board advised its licensees about changes to the [NCLEX-RN Test Plan](#), which became effective on April 1, 2019, and extends to March 31, 2022. The NCLEX-RN Test Plan provides a summary of the content and scope of the exam, serves as a guide for exam development and candidate preparation, and includes an in-depth overview of the content categories and administrative procedures of the exam. Test plans are updated every three years to reflect current, entry-level nursing competency. Further information regarding the history and purpose of the test plan can be found at the [NCSBN website](#).

## **Board Votes to Oppose Changes to Federal Regulations Regarding Conscience Rights in Healthcare**

At its May 28, 2019 [meeting](#), the Board voted to oppose changes to the federal rules regarding Protecting Statutory Conscience Rights in Health Care ([84 Fed. Reg. 23170, at 23263](#)), and delegate authority to BRN's Executive Officer to assist California's Office of the Attorney General in opposing the rule change, including executing any necessary declarations. The federal rules, promulgated by the Department of Health and Human Services, Office of Civil Rights section, and effective July 22, 2019, create an exemption

for any individual, entity, or provider to deny a patient health care on the basis of “religious, moral, ethical or other reasons.”

According to BRN staff’s [agenda summary](#) on this issue, the federal rule creates an overly broad exemption that allows any individual, entity, or provider (ranging from physicians, nurses, to front office staff) to deny patients health care on the basis of “religious, moral, ethical, or other reasons,” and makes no exception for medical emergencies. Board staff opine that the federal rule will disproportionately impact access to care for women, sexual abuse victims, religious minorities, people living with HIV/AIDS, and lesbian, gay, bisexual, and transgender (LGTBQ) patients. Also, individuals living in rural and other underserved communities may experience even more barriers to obtaining care. Board staff cited to statements from other national organizations such as the American Nurses Association and the American Academy of Nursing in concluding that the rule changes are in conflict with several federal and California anti-discrimination laws, as well as the Board’s highest priority of protecting the public.

## LEGISLATION

[AB 241 \(Kamlager-Dove\)](#), as amended August 28, 2019, and as it relates to BRN, adds section 2736.5 to the Business and Professions Code regarding required instruction courses for BRN licensees. The Nursing Practice Act requires licensees to complete specific courses of instruction, including those regarding alcoholism, substance dependency, and spousal abuse. The bill requires the Board to adopt regulations, by January 1, 2022, requiring all continuing education courses for licensees to contain curriculum that include specific instruction on understanding implicit bias in treatment. The bill requires continuing education providers to comply with these regulations and

requires the Board to audit such education providers for compliance, by January 1, 2023. At its June [meeting](#), the Board voted to oppose this bill citing concern about the administrative impact the bill would impose on the Board.

Governor Newsom signed AB 241 on October 2, 2019 (Chapter 417, Statutes of 2019).

[AB 1622 \(Carrillo\)](#), as amended September 6, 2019, and as it pertains to BRN, amends section 2746.2 of the Business and Professions Code to allow BRN to include family physicians for consideration on the nurse-midwifery education committee. The committee, as set forth in section 2746.2, develops necessary standards relating to education requirements, ratios of nurse-midwives to supervising physicians, and associated matters.” According to the author, family physicians receive comprehensive training in preventative and primary care for people from birth, across all settings; such training encourages continuity of care for the benefit of the patients. The author believes this bill addresses the barriers that family physicians face in practicing to their full capacity, for the benefit of patients, by amending the law to remove unnecessary constraints on the profession.

Governor Newsom signed AB 1622 on October 8, 2019 (Chapter 632, Statutes of 2019).

[AB 239 \(Salas\)](#), as introduced January 18, 2019, amends section 78261.5 of the Education Code relating to community colleges and admissions selection procedures. According to the author, about 70% of nurses receive their education from community colleges. This bill extends community college registered nursing programs’ authorization to use any diagnostic assessment tool commonly used in registered nursing programs and

approved by the Chancellor of the California Community Colleges until January 1, 2025 (the provisions would have otherwise been repealed on January 1, 2020). If the number of applicants to such programs exceed capacity, existing law authorizes these programs to use additional multi-criteria screening tools (MCST), a random selection process, or some combination of the two, in order to resolve the issue of the selection process. According to the author, this bill will help address the impact high volumes of applicants have on admissions and decrease attrition rates by assessing candidates via multiple aspects of their background that give insight to their ability to handle course work.

Governor Newsom signed AB 239 on July 12, 2019 (Chapter 83, Statutes of 2019).

[AB 1514 \(Patterson\)](#), as amended August 19, 2019, amends section 2881 of the Public Utilities Code to permit nurse practitioners to certify individuals to participate in the California Deaf and Disabled Telecommunications Program (DDTP). DDTP is a universal service program that provides specialized telephone equipment and services to individuals who have difficulty using the telephone due to issues with sight, hearing, speech, movement, or memory. Existing law requires that individuals with such limitations obtain certification from specified health care providers to receive devices and services through DDTP. This bill authorizes nurse practitioners to certify the needs of individuals who have been diagnosed by a physician or surgeon as deaf or hard of hearing, so that they may participate in DDTP. According to the author, adding nurse practitioners to the list of certified providers will ensure all individuals who need to enroll may do so in a timely manner, and ensure more vulnerable individuals without access to a nearby physician will not be impeded from accessing the program.

Governor Newsom signed AB 1514 on September 12, 2019 (Chapter 291, Statutes of 2019).

[SB 227 \(Levva\)](#), as amended August 30, 2019, amends sections 1279 and 1280.3 of the Health and Safety Code to require the Department of Public Health’s periodic, unannounced inspections of hospitals to include review of the hospital’s compliance with nursing staff ratios. It establishes administrative penalties for nurse staff ratio violations of \$15,000 for first violations and \$30,000 for subsequent violations. The bill allows hospitals to avoid penalties if the hospital can demonstrate that any fluctuation in required staffing levels was unpredictable and uncontrollable, that prompt efforts were made to maintain required staffing levels, and that the hospital immediately used and exhausted its on-call list of nurses and the charge nurse. Further, the bill permits DPH to implement, interpret and specify this bill through an All Facilities Letter, or similar instruction.

Governor Newsom signed SB 227 on October 12, 2019 (Chapter 843, Statutes of 2019).

[SB 322 \(Bradford\)](#), as introduced February 15, 2019, amends section 1278.5 of the Health and Safety Code to prohibit a health facility from discriminating or retaliating against patients, employees, and health care workers for reporting a grievance or participating in an investigation of the health facility’s quality of care, services, or conditions. A person who willfully violates these provisions is guilty of a misdemeanor and is subject to a civil penalty. SB 322 codifies the State of California’s public policy to encourage patients, nurses, and other health care staff to report unsafe patient conditions in order to protect patients and ensure the safety of health care facilities. Specifically, this bill grants a health facility employee, or their representative, the right to privately discuss



possible regulatory violations or patient safety concerns with an inspector during the course of an investigation or inspection by the California Department of Public Health (CDPH), and provides whistleblower protections.

Governor Newsom signed SB 322 on July 10, 2019 (Chapter 72, Statutes of 2019).

[AB 993 \(Nazarian\)](#), as amended September 4, 2019, would have added section 1367.693 to the Health and Safety Code and section 10123.833 to the Insurance Code, relating to health care coverage. Specifically, the bill would have designated an “HIV specialist,” including nurse practitioners that qualify, as a primary care provider. According to the author, HIV patients may be subject to serious complications if a regular provider administers health services without specified knowledge about HIV. And by allowing such providers to serve as primary care providers, HIV patient access to health care providers trained and experienced with meeting the complex needs of HIV patients would be improved.

Governor Newsom [vetoed](#) AB 993 on October 12, 2019 stating, “[t]his bill would require health plans and insurers to accept providers who specialize in HIV as primary care providers. This bill is unnecessary because existing law already permits specialist physicians to serve as primary care physicians.”

## **RECENT MEETINGS**

At its June [meeting](#), the Board re-elected Michael Jackson as Board President and Donna Gerber as Board Vice President [Agenda item 10]. The Board also provided an Investigation Program Update related to timeframes for investigations by BRN’s Investigation Unit and DCA’s Division of Investigation (DOI). For the fiscal year of 2019, the BRN Investigation Unit completed a total of 644 investigation reports, with an average

timeframe of 198 days to complete the investigations, while the DOI completed 337 investigation reports, with an average timeframe of 335 days to complete the investigations. Moving forward, investigation timeframes will continue to be a focus, and will be reported to the Board on a regular basis.

At its September [meeting](#), the Board heard public comment regarding the conflict between increasing concern with clinical displacements and schools' appeals to add to existing nursing program enrollments. The Board describes "clinical displacement" as the phenomenon when one nursing school is ousted from a clinical experience or has their opportunities reduced because the clinical site has added students from another nursing school. Specifically, representatives from CNI College spoke to the Board in their appeal to increase enrollment in their associate degree nursing program to meet growing demand for nurses [Agenda item 7.5]. After listening to public comment from CNI College representatives, as well as representatives from local hospitals, the Board voted to defer action on increasing enrollment to get more information regarding the concern for clinical displacements. Referencing the same concern in the aforementioned decision, the Board voted to defer action regarding changes to approved program-additions and new campuses for Chamberlain College Baccalaureate Degree Nursing Program, and Stanbridge University School of Nursing Associate Degree Nursing Program [Agenda item 7.7.5]. The Board deferred action on the three schools until it could be discussed further at the November 13–14, 2019 [meeting](#).